IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.4247/07
Hariman & Ors. Vs. Manohari & Ors.

31.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Mukesh Agrawal for petitioners.
Shri D.S. Raghav for respondent.

The petitioners have challenged the order dated 2.5.2007 passed by the Board of Revenue whereby the Board while rejecting the appeal of the petitioners upheld judgment of the Revenue Appellate Authority passed on 20.12.2001. The Revenue Appellate Authority while rejecting the appeal of the petitioners upheld the order of the Sub-Divisional Officer dated 1.12.1999 in a revenue suit filed by the private respondent for

declaration of his rights and correction of entries as also for injunction. In that order, the SDO held that the plaintiff Manohari was allotted a land measuring 5 bighas out of old khasra no.3 but in revenue records no such land was mentioned in the name of the plaintiff. The plaintiff was in possession of the lands of khasra nos. 136 and 137. SDO declared the plaintiff as gair-khatedar tenant to the extend of land measuring 1.25 hectares out of the lands of khasra no.136 with a further direction that such land be excluded from the `savai chak land' and recorded in `gair khatedari' of the plaintiff and he may be dispossessed from the remaining land of khasra nos. 136 and 137. The Revenue Appellate Authority in appeal filed by the

petitioner however held that the trial court did not examine the `milan chetraphal' comparative chart of old khasra numbers vis-a-vis new khasra numbers. Old khasra number 3 and within that khasra allotments were made to so many persons as was evident from `jamabandi' of Svt. 2033-36 but only such part of the land could have been declared `savai chak' which was left vacant after allotment to all concerned. It was held that trial court ought to have examined as to what was the total land khasra of old khasra no.3/85 and it was in whose khatedari and that who was in possession of the new khasra no.136. The Revenue Appellate Authority also took into consideration the report of the Inspector of Land Records according to which the

petitioners were trespassers of the disputed land. The Revenue Appellate Authority therefore held that the decision of the suit filed by the private respondent was rendered without making proper enquiry into the facts and without providing any opportunity of hearing to the petitioner and the same was unsustainable in law and therefore while setting aside the decree dated 1.12.1999 passed by the trial court, remanded the matter back to the trial court for deciding it afresh. The Board by impugned order has reversed the judgment of the Revenue Appellate Authority and allowed the appeal. Hence this writ petition.

Shri Mukesh Agrawal, the learned counsel for the petitioner submitted that the Board has committed an error of law

in not appreciating that petitioners were in possession of the land in dispute and by impugned order the trial court ought not to have passed any order which prejudicially affected their right and that such right could be determined by the trial court only after providing proper opportunity of hearing to them. It was argued that the private respondent has come out with a false plea that he is in possession of the land therefore the SDO has committed an error of law in not first determining the fact as to who was in possession and passed the order by merely relying on the report of the Patwari and similar error was committed by the Board in solely basing its judgment on the report of the Inspector of Land Records.

Having heard the learned counsel for the petitioner and perused the material on record, I find that the approach taken by the Revenue Appellate Authority in remanding the matter to the trial court for deciding it afresh after making proper enquiry and providing opportunity of hearing to the petitioners cannot be said to be perverse or illegal. The Board in its order found that after the allotment was made in favour of the private respondent and others, the SDO faced difficulty in putting such allottees in possession because of the illegal trespass over the land by the petitioners and therefore the private respondent / allottees had to file the revenue suit. The Board noted that the petitioners were simple trespassers and

had no title to remain in possession of the land in dispute and the Revenue Appellate Authority without looking into this aspect set aside the judgment and decree passed by the SDO. The Board also took into consideration the fact that the private respondent was a member of S.C. and allotment made to him was liable to be protected and accordingly given effect to. On perusal of the order of the Revenue Appellate Authority also it does not appear as to what was the basis on which the petitioners were claiming right over the land allotted to the private respondents. The nature of the land was changed to savai chak and allotment out of such land was made in favour of the petitioners and the private respondent and others. The petitioners cannot claim

any better title or right over the same as compared to the private respondent who was the allottee. Neither the Board nor the SDO, nor even the Revenue Appellate Authority has committed an error in relying on the report of the Patwari and Inspector of Land Records according to which, character of the petitioners was only that of trespassers, I therefore do not find that the order passed by the Board of Revenue suffers from any error apparent on the face of record so as to warrant interference by this Court. There being no merit, this petition is dismissed summarily.

(Mohammad Rafiq),J.

Rs/-